IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.110

Case No. : RSA-5202-2018 (O&M)

Date of Decision : September 11, 2023

Bhagwat and others .... Appellants

vs.

Prem Chand and another .... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Manoj Kumar Sood, Advocate for the appellants.

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GURBIR SINGH, J. :

1. **CM No.14256-C of 2018 :** This is application under Section 5 of the Limitation Act, 1963 for condonation of delay of 46 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 46 days in filing the present appeal is condoned. The application stands disposed of.

2. **CM No.14255-C of 2018 :** This is application under Section 151 CPC for condonation of delay of 342 days in re-filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 342 days in re-filing the present appeal is condoned. The application stands disposed of.

3. **Main Appeal :** This Regular Second Appeal has been filed by the defendants against the judgment dated 07.11.2016, passed in appeal by learned Additional District Judge, Faridabad, whereby judgment and decree dated 09.12.2014, passed by learned Civil Judge (Junior Division), Faridabad, has been set aside and the appeal has been allowed.

4. The plaintiffs-respondents (hereinafter referred to as – the plaintiffs) filed a suit against the defendants-appellants (hereinafter referred to as – the defendants) for declaration to the effect that entries appearing in the revenue record as mortgagees be declared as null and void and not binding upon the plaintiffs and further decree of redemption and mandatory injunction be passed and defendants be directed to accept the mortgage money of Rs.88/- from the plaintiffs against receipt and to hand-over the actual physical vacant possession of mortgaged land to the plaintiffs. It was further prayed that decree of permanent injunction be passed and defendants be restrained from further negotiating, alienating and transferring the suit property in any manner.

5. It is the case of the plaintiffs that they are joint owners in actual physical cultivating possession to the extent of half share in the suit property, as mentioned in the heading of the plaint. Plaintiff no.1 had purchased the ownership rights vide registered sale deed dated 16.02.2011, of land measuring 02 kanal out of 07 kanal 16 marla land and became owner in possession thereof. Plaintiff no.2 became owner in possession of 01 kanal 18 marla land out of 07 kanal 16 marla. The above mentioned land was mortgaged to Teja by Panni – father of plaintiff no.2 on 23.02.1960 for Rs.88/-. On the death of Teja, suit property was inherited by the defendants being his legal heirs and they were recorded as mortgagees in possession of the suit property. Father of plaintiff no.2 had paid the mortgage money of Rs.88/- in his lifetime to the defendants on 30.03.1991 and defendants also handed over the actual physical vacant possession of the mortgage land to the father of plaintiff no.2. The plaintiffs had already paid mortgage money to the defendants and they again offered the mortgage money to them, with request to get the suit land redeemed in their favour and to get the revenue entries corrected in the favour of plaintiffs.

6. Defendants no.1 to 5 contested the suit and submitted that as per the agreement, mortgage was required to be redeemed within five years from the date of mortgage but the mortgagor failed to redeem the mortgage within stipulated time. So, the defendants have become the owners of the suit property by efflux of time. The defendants are in possession of the suit property as owners, since the period of getting the land redeemed has already expired. Defendants no.1 to 5 also filed a counter-claim against respondents/non-counter claimants and Smt. Savitri Devi (proforma respondent) alleging that the counter-claimants and proforma respondents are owners in possession of their respective share of the land.

7. On the basis of evidence led by the parties, the learned Trial Court dismissed the suit, on the ground that petition for redemption was required to be filed under the Redemption of Mortgages (Punjab) Act, 1913 before the Collector, but suit has been filed directly in the Civil Court which is not proper. So, no relief can be granted on this ground. It has been further observed that Panni died in the year 1993 but the suit was filed in the year 2011, whereas it was required to be filed within a period of three years from the date of his death. Thus, the suit is barred by limitation. The counter-claimants did not become owners of the suit property merely by efflux of time, but also there was no evidence that the suit land was mortgaged for a fixed period of five years. The counter-claim was dismissed. The learned Appellate Court has held that the remedy provided under the Redemption of Mortgages (Punjab) Act, 1913 is summary remedy and the same is in addition to the ordinary remedy and is not in substitution thereof. Reliance in this regard has been placed on a judgment of this Court passed in **Gurditta Singh and another vs. Harbans Singh** reported as **1974 PLJ 325 (P&H)**, wherein it is held that if the mortgagor does not avail remedy of the Redemption of Mortgages (Punjab) Act, 1913 he is not debarred from filing a suit for redemption of the land in the Court within the period of limitation. Reliance has also been placed on a judgment of Hon'ble Apex Court in **Singh Ram (D) through LRs vs. Sheo Ram and others** reported as **2014(3) PLJ (Civil) 96**, and it has been held that usu-fructuary mortgagee is not entitled to file a suit for declaration that he had become an owner merely on expiry of 30 years from the date of mortgage. it has been further held that in case of usu-fructuary mortgage, right to get redemption of mortgagor does not extinguish because of expiry of period of 30 years or suit for redemption would not be barred by limitation. Thus, the order of the learned Trial Court was set aside and the appeal was allowed and suit was decreed.

8. Learned counsel for the appellants has argued that the mortgage was for a period of five years. So, it was required to be redeemed after five years but the respondents failed to get the same redeemed within period of limitation. The suit is barred by limitation. It is further argued that a new case is set up by leading evidence which is beyond pleadings and could not be read by the Courts below.

9. I have heard learned counsel for the appellants and perused the case file.

10. Both the Courts below have given a concurrent finding that at the time of mortgage, possession of the property was given. So, it is a usu-fructuary mortgage. There is no evidence that mortgage was for a period of five years. Both the Courts below have rightly held so. Since it is proved that usu-fructuary mortgage was created and defendants came into possession of the property, so, learned Appellate Court has rightly held that there is no limitation to get the property redeemed which is under usu-fructuary mortgage. There is no misreading of evidence.

11. In view of the aforesaid, I find no merit in the instant second appeal. The findings recorded by the Appellate Court are based on proper appreciation of evidence and do not suffer from any perversity or illegality. No question of law, much less any substantial question of law, arises for determination in the instant second appeal. The appeal is without any merit and is accordingly dismissed in limine.

12. Pending applications, if any, shall stand disposed of along with this judgment.

September 11, 2023 **(GURBIR SINGH)**
monika **JUDGE**

Whether speaking/reasoned ?	*Yes/No.*
Whether reportable ?	*Yes/No.*